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August 9, 2021

VIA ECF & E-MAIL

United States District Court
Southern District of New York
Attn: Hon. Katherine Polk Failla, U.S.D.J.
40 Foley Square, Courtroom 618
New York, NY 10007-1312
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Re: Martinez-Cruz, *et ano.* v. York Bagels Inc., *et al.*
Case No: 1:20-cv-4084 (KPF) (SN)
MLLG File No.: 168-2020

Dear Judge Failla:

This firm represents the Defendants in the above-referenced case. Defendants write to respectfully request that this Court “so Order” the enclosed fully executed Stipulation of Vacatur of Judgment. As set forth below, Plaintiffs consent to the instant application.

Relevant Factual Background & Procedural History

By way of background, this federal & state wage-and-hour case was resolved pursuant to Rule 68 of the Federal Rules of Civil Procedure (hereinafter referred to as “Rules” or “Rule”) in which a judgment was entered on June 7, 2021. The judgment has been paid in full and the parties have agreed that Defendants would make the instant application with Plaintiffs’ consent.

This Court Should “so Order” the Stipulation of Vacatur of Judgment

Defendants respectfully submit that because the parties have agreed and contemplated to have the June 7, 2021 judgment vacated upon payment in full, this Court should “so Order” the enclosed Stipulation of Vacatur of Judgment. Further, Rule 60(b)(5) provides that, on motion¹ and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding because the judgment has been satisfied, released, or discharged.

¹ Defendants respectfully request leave of this Court to make the instant request as a letter motion rather than a formal motion (as required by Local Civil Rule 7.1) in accordance with Rule 1, which requires that the Rules be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding. See Fed. R. Civ. P. 1 (emphasis added). Because the parties have agreed to the requested relief in the Agreement, Defendants respectfully submit that this Court grant leave to file the instant request as a letter motion rather than a formal motion.

Here, Defendants further respectfully submit that all of their obligations under both the June 7, 2021 judgment have been satisfied. Rule 60(b)(6) also provides that the court may relieve a party from a final judgment for any other reason that justifies relief; Defendants respectfully submit that the parties' agreement to vacate the foregoing judgment upon satisfaction constitutes such a reason.

Accordingly, this Court should "so Order" the Stipulation of Vacatur of Judgment both pursuant to the parties' agreement and under Rules 60(b)(5) and 60(b)(6). Defendants thank this honorable Court for its time, attention, and anticipated courtesies in this case, and submit a courtesy copy of this electronically filed letter via email pursuant to ¶ 2(B) of this Court's Individual Rules of Practice in Civil Cases.

Dated: Lake Success, New York
August 9, 2021

Respectfully submitted,

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